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Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Pittsburgh Hotel, LLC

Mailing Address 360 N. Crescent Drive, Suite 303

City Beverly Hills State CA Zip 90210 Email BVelasco@platinumequity.com

Phone 310-228-9473 Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name J. Lawson Johnston - Dickie McCamey Attorneys at Law

Mailing Address Two PPG Place, Suite 400

City Pittsburgh State PA Zip 15222-5402 Email ljohnston@dmclaw.com

Phone 412-281-7272 Fax (optional) 888-811-7144

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. *(The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.)*

Please see attached.

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature J. Lawson Johnston Date 10-25-2018

Appeals should be submitted in person or by mail to:
**Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219**

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Pittsburgh Hotel, LLC
360 N. Crescent Drive, Suite 303
Beverly Hills, CA 90210

Interstate Hotels & Resorts, Inc.
2011 Crystal Drive, Suite 1100
Arlington, VA 22202

Maverick Management Group, LLC
1890 Palmer Avenue, Suite 404
Larchmont, NY 10538

ACHD Violation No. 180901

Violations of Article XXI (“Air
Pollution Control”) at facility:

Sheraton Pittsburgh Airport Hotel
1160 Thorn Run Road,
Coraopolis, PA 15108

**RESPONSE TO ADMINISTRATIVE ORDER OF
PITTSBURGH HOTEL, LLC AND INTERSTATE HOTELS & RESORTS, INC.**

Respondents Pittsburgh Hotel, LLC (“Pittsburgh Hotel”) and Interstate Hotels & Resorts, Inc. (“Interstate”) (collectively “Respondents”) appeal the Administrative Order (“Order”) of the Allegheny County Health Department (“ACHD”) as follows. Preliminarily, Respondents respond that most of the factual statements in the Order are factually incorrect and thus, all alleged facts not expressly admitted are denied. As a result, the legal conclusions and associated civil penalties are improper and not supported by the facts or the law. Also, Respondents generally object to the ACHD’s use of improper “group” allegations in the Order without any degree of specificity. As a result, all facts alleged to the group of named respondents are denied unless expressly admitted.

Simultaneously with the filing of this Notice of Appeal, Respondents have forwarded \$394,866.67 of the assessed civil penalty to the ACHD in accordance with Article XXI, § 2109.06.a.2 of the ACHD Rules and Regulations, and as agreed to by Jeffrey R. Bailey, Esq., ACHD Assistant Solicitor, via electronic mail dated October 23, 2018.

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Respondents admit that Pittsburgh Hotel is a Delaware limited liability company with a registered business address of 600 N. 2nd Street, Suite 401, Harrisburg, Pennsylvania 17101. Respondents admit that Pittsburgh Hotel owns the Sheraton Pittsburgh Airport Hotel located at 1160 Thorn Run Road, Coraopolis, Pennsylvania 15108 (“Sheraton Hotel”) and deny all other allegations of Paragraph 3, including without limitation any legal conclusions resulting from Pittsburgh Hotel’s ownership.

4. Respondents admit that Interstate is a Delaware corporation with a principal place of business of 2011 Crystal Drive, Suite 1100 Arlington, VA 22202. Respondents deny that it was the property manager for the Sheraton Hotel at all relevant times, and deny all other allegations of Paragraph 4, including without limitation, any attempts to attribute action to Interstate.

5. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 5.

6. Paragraph 6 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

7. Paragraph 7 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

8. Paragraph 8 consists of legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, Respondents contend that group allegations such as in Paragraph 8 are improper.

9. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 9. Paragraph 9 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

10. The ACHD's records speak for themselves. To the extent that Paragraph 10 misstates or misinterprets the ACHD's records, Respondents deny those allegations.

11. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 11, as Respondents are unaware of the circumstances surrounding what occurred on May 18, 2017. Respondents admit that the sprinkler system had been activated on or around that date.

12. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 12.

13. Respondents admit that Interstate retained SERVPRO to perform certain services related to the clean-up of water and water damage. All other allegations of Paragraph 13 or legal conclusions implied by SERVPRO's retention are denied.

14. Respondents deny the allegations of Paragraph 14 to that extent that they relate to asbestos containing material. Paragraph 14 also contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Respondents lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 14. Paragraph 14 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

15. Respondents deny the allegations that they allowed any activity alleged to have been performed by SERVPRO. Respondents lack knowledge or information sufficient to form a belief as to the rest of the allegations of Paragraph 15. Paragraph 15 also contains legal

conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

16. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 16. Paragraph 16 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 16 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

17. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 17. Paragraph 17 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 17 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

18. Respondents deny that they retained ATC Group Services LLC (“ATC”).

19. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 19. Paragraph 19 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 19 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

20. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 20. Paragraph 20 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 20 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

21. The report speaks for itself. To the extent that Paragraph 21 misstates or misinterprets the report, Respondents deny those allegations. Paragraph 21 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. To the extent that a response is required, the allegations are denied.

22. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 22. Paragraph 22 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 22 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

23. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 23. Paragraph 23 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 23 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

24. Respondents deny that they retained PRISM Response, Inc. (“PRISM”). Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 24. Paragraph 24 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 24 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

25. Respondents deny their alleged involvement with any actions or inactions alleged in Paragraph 25. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 25, as related to the actions of PRISM and the awareness of the ACHD. Paragraph 25 also contains factual assumptions to which Respondents will hold the ACHD to its

burden of proof. Paragraph 24 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

26. Respondents deny their alleged involvement with any of the actions or inactions alleged in Paragraph 26. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 26, regarding the complaint that the ACHD allegedly received and the subsequent investigation it performed.

27. Paragraph 27 refers to an Asbestos Abatement Permit application, which speaks for itself. To the extent that Paragraph 27 misstates or misinterprets this Asbestos Abatement Permit application, Respondents deny those allegations. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 27. Paragraph 27 also contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. To the extent that a response is required, the allegations are denied.

28. The referred-to “Asbestos Abatement and Water Restoration Protocol” speaks for itself. To the extent that Paragraph 28 misstates or misinterprets this protocol, Respondents deny those allegations. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 28.

29. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 29. Paragraph 29 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 29 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

30. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 30. Paragraph 30 contains factual assumptions to which Respondents

will hold the ACHD to its burden of proof. Paragraph 30 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

31. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 31. Paragraph 31 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 31 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

32. Paragraph 32 refers to a second Asbestos Abatement Permit application, which speaks for itself. To the extent that Paragraph 2 misstates or misinterprets this Asbestos Abatement Permit application, Respondents deny those allegations. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 32.

33. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 33. Paragraph 33 contains factual assumptions to which Respondents will hold the ACHD to its burden of proof. Paragraph 33 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

VIOLATIONS

34. In Paragraphs 34 through 38, the ACHD alleges that each of the named respondents violated Article XXI, § 2101.1 l.a.3, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 34 through

38, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 34, Respondents deny those allegations. Paragraphs 34 through 38 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

35. In Paragraphs 39 through 42, the ACHD alleges that each of the named respondents violated Article XXI, § 2101.1 l.b.4, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 39 through 42, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 39, Respondents deny those allegations. Paragraphs 39 through 42 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

36. In Paragraphs 43 through 46, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.60, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. Respondents lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 45. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 43 through 46, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the

ACHD Rule given in Paragraph 43, Respondents deny those allegations. Paragraphs 43 through 46 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

37. In Paragraphs 47 through 49, the ACHD alleges that each of the named respondents violated federal asbestos regulations, and the ACHD Rules incorporating those regulations, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 47 through 50, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the federal asbestos regulations and ACHD Rule given in Paragraph 47, Respondents deny those allegations. Paragraphs 47 through 49 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

38. In Paragraphs 50 through 53, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.62.h.1, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 50 through 53, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 50, Respondents deny those allegations. Paragraphs 50 through 53 also

contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

39. In Paragraphs 54 through 56, the ACHD alleges that each of the named respondents violated Article XXI, Section 2105.62.k, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 54 through 56, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 54, Respondents deny those allegations. Paragraphs 54 through 56 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

40. In Paragraphs 57 through 60, the ACHD alleges that each of the named respondents violated Article XXI, Section 2105.63.b.l, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 57 through 60, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 57, Respondents deny those allegations. Paragraphs 57 through 60 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

41. In Paragraphs 61 through 64, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.b.2, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 61 through 64, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 61, Respondents deny those allegations. Paragraphs 61 through 64 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

42. In Paragraphs 65 through 70, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.c.1 and Article XXI, § 2105.63.c.2, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 65 through 70, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rules given in Paragraphs 65 and 66, Respondents deny those allegations. Paragraphs 65 through 70 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

43. In Paragraphs 71 through 74, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.d, and restates several of the factual allegations

stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 71 through 74, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 71, Respondents deny those allegations. Paragraphs 71 through 74 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

44. In Paragraphs 75 through 77, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.e, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 75 through 77, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 75, Respondents deny those allegations. Paragraphs 75 through 77 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

45. In Paragraphs 78 through 81, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.f, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 78 through

81, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 78, Respondents deny those allegations. Paragraphs 78 through 81 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

46. In Paragraphs 82 through 84, the ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.k, and restates several of the factual allegations stated in Paragraphs 3 through 33, above. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with any actions or inactions alleged in Paragraphs 78 through 81, and object to the ACHD's attempt to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 82, Respondents deny those allegations. Paragraphs 82 through 84 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

CIVIL PENALTY

47. In Paragraphs 85 through 93, the ACHD assesses a civil penalty, pursuant to the Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, §2109.06.a.1, upon the three named respondents "jointly and severally" for the violations alleged in Paragraphs 34 through 84, and restates several of the factual allegations stated previously in the Order. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, Respondents deny their alleged involvement with, and liability for, any actions or inactions alleged in Paragraphs 85 through 93, and object to the ACHD's attempt

to impute knowledge and group action upon each of the named respondents. To the extent that the ACHD misstates or misinterprets the ACHD Rules given in Paragraphs 85 and 87, Respondents deny those allegations. Paragraphs 85 through 93 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. Respondents further deny and disagree with the ACHD's assertion that liability assessed under the Order is joint and several, as is discussed further below.

ORDER

48. In Paragraphs 94 through 99, the ACHD issues an order, pursuant to Article XXI §§ 2109.03.a.1 and 2105.62.e and the Local Health Administration Law, 19 P.S. § 12010, upon each of the named respondents to pay the assessed civil penalty in accordance with ACHD Rules, again asserting that each is "jointly and severally" liable. Paragraphs 94 through 99 contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

OBJECTIONS TO THE ORDER

49. Respondents deny that they violated the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001-4014, and the ACHD's Rules and Regulations, Article XXI, "Air Pollution Control," as alleged in the Order, and as such, Respondents assert that the civil penalty assessed to them under Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, §2109.06.a.1 is improper and in contravention of law.

50. The ACHD's assertion that each of the respondents is "jointly and severally" liable for any civil penalty is contrary to 42 P.S. § 7102.a.2, which provides that "a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's

liability...” Pennsylvania law prohibits the imposition of joint and several liability in this proceeding and requires the ACHD to issue a separate civil penalty to each of the respondents, if and when found liable, related to that respondent’s liability.

51. The ACHD’s attempt to require Respondents to either forward the penalty amount to the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty, prior to having a chance to contest the charges against them, is a violation of due process protected by the Fifth and Fourteenth Amendments to the United States Constitution and the Pennsylvania Constitution.

52. The civil penalty assessed in the Order is excessive in light of Respondents’ good faith effort to comply.

53. The ACHD abused its discretion in calculating the civil penalty by failing to properly apply its own rules regarding the factors to be considered. Additionally, the ACHD relied on incorrect factual assumptions while calculating the civil penalty, and as such, the amount of the civil penalty is arbitrary and capricious.

54. The ACHD abused its discretion by issuing the Order to Respondents who did not cause, contribute to, create or control the conditions or events described in the Order or fall within the purview of the cited statutory or regulatory provisions.

55. The ACHD’s issuance of the Order and assessment of a civil penalty to Respondents is arbitrary and capricious, an abuse of discretion, and/or contrary to law.

PRAYER FOR RELIEF

56. Respondents respectfully request that the Hearing Officer declare that:

a. the regulation requiring Respondents to prepay the civil penalty or post an appeal bond to the ACHD is in violation of due process;

- b. the assessment of a single civil penalty to three unrelated respondents, and without considering the individual liability, if any, of each is contrary to Pennsylvania law;
- c. the penalty assessed to Pittsburgh Hotel is without basis in facts or law;
- d. the penalty assessed to Interstate is without basis in facts or law;
- e. each alleged violation of local and federal law against Pittsburgh Hotel is without basis in facts or law; and
- f. each alleged violation of local and federal law against Interstate is without basis in facts or law.

MOTION FOR A CLOSED HEARING

57. Respondents move and respectfully request any hearing, fact finding, record, and decision related to this Order be closed to the public.

RESERVATION OF DEFENSES

58. Respondents reserve the right to assert additional defenses upon discovery of further information concerning the factual and legal bases of the Order or as otherwise permitted by law.

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

Pittsburgh Hotel, LLC
360 N. Crescent Drive, Suite 303
Beverly Hills, CA 90210

Interstate Hotels & Resorts, Inc.
2011 Crystal Drive, Suite 1100
Arlington, VA 22202

Maverick Management Group, LLC
1890 Palmer Avenue, Suite 404
Larchmont, NY 10538

ACHD Violation No. 180901

Violations of Article XXI (“Air
Pollution Control”) at facility:

Sheraton Pittsburgh Airport Hotel
1160 Thorn Run Road,
Coraopolis, PA 15108

ADMINISTRATIVE ORDER

NOW, this 21st day of September, 2018, the Allegheny County Health Department (hereinafter “ACHD”) issues this Administrative Order after it has found and determined the following:

I. AUTHORITY

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under the Local Health Administration Law, 19 P.S. §§ 12001-12028, whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including, but not limited to, the ACHD’s Rules and Regulations, Article XXI, “Air Pollution Control” (Allegheny County Code of Ordinances Chapters 505, 507, and 535) (hereinafter “Article XXI”).

2. The ACHD, through its powers under Article XXI, maintains the authority to regulate all asbestos abatement activity within the boundaries of Allegheny County. With regard to regulations concerning asbestos abatement activity in Allegheny County, Article XXI also incorporates the federal asbestos abatement regulations. Article XXI § 2105.62.b.

II. FINDINGS

3. Pittsburgh Hotel, LLC (hereinafter “Pittsburgh Hotel”) is a Delaware limited liability company with a registered business address of 600 N. 2nd Street, Suite 401, Harrisburg, Pennsylvania 17101. Pittsburgh Hotel is the owner of the Sheraton Pittsburgh Airport Hotel (hereinafter “Sheraton Hotel”) located at 1160 Thorn Run Road, Coraopolis, Pennsylvania 15108 (Parcel ID No.: 0596-P-00205-0000-00).

4. Interstate Hotels & Resorts, Inc. (hereinafter “Interstate”) is a Delaware corporation with a principal place of business at 2011 Crystal Drive, Suite 1100, Arlington, VA 22202. At all times relevant, Interstate is a hotel management company and was the property manager for the Sheraton Hotel.

5. Maverick Management Group LLC (hereinafter “MMG”) is a New York limited liability company with a primary place of business at 1890 Palmer Avenue, Suite 404, Larchmont, New York 10538. At all relevant times, MMG operated a project management company and was retained by Pittsburgh Hotel and Interstate to provide project management services for the remediation and restoration work performed in the Sheraton Hotel.

6. Pittsburgh Hotel, Interstate, and MMG are “persons” as that term is defined in Article XXI, § 2101.20 and 42 U.S.C. § 7602(e).

7. The Sheraton Hotel is a “facility” as defined by 40 C.F.R. § 61.141 and as a “facility” the building is subject to the asbestos abatement requirements of Article XXI §§ 2105.60-2105.63 and 40 C.F.R. § 61.145.

8. At all times relevant, Pittsburgh Hotel, Interstate, and MMG were the “owner or operator of a demolition or renovation activity” at the Sheraton Hotel as that term is defined at 40 C.F.R. § 61.141.

9. The Sheraton Hotel rooms, hallways, and conference rooms have a false ceiling constructed of drywall and a steel structural decking above the drywall which is covered with asbestos containing spray-on fireproofing. The drywall ceilings and walls are “facility components” as the term is defined by Article XXI, § 2101.20, and 40 C.F.R. § 61.141.

10. ACHD records indicate that multiple Asbestos Abatement Permits were issued for the Sheraton Hotel for the removal of asbestos containing fireproofing on the steel structural decking and beams in various locations throughout the facility.¹

11. On May 18, 2017, a guest of the Sheraton Hotel set off a smoke alarm in his room which caused the sprinkler system in the room to activate and discharge a large volume of water. The water ran through the flooring and walls causing flooding in the rooms located on floors 1 through 6.

12. Green Maple Enterprises LLC operates a residential and commercial restoration and remediation business under the fictitious name SERVPRO of West Hills (hereinafter “SERVPRO”).

13. After the flooding was discovered, SERVPRO was retained by Pittsburgh Hotel, Interstate, and MMG to provide water damage restoration services.

14. Due to the aforesaid flooding, drywall in the rooms became saturated and portions of the drywall ceilings collapsed exposing the asbestos containing spray-on insulation on the steel structural decking. The exposed asbestos containing spray-on insulation was observable to

¹ The following Asbestos Abatement Permits were issued for the Sheraton Hotel: December 10, 2012 (Permit No.: PAA12-0608); December 10, 2012 (Permit No.: PAA13-0001); April 1, 2013 (Permit No.: PAA13-0176); April 29, 2013 (Permit No.: PAA13-0219); and July 1, 2014 (Permit No.: PAA14-0289).

Pittsburgh Hotel, Interstate, and MMG prior to the start of the renovation work by SERVPRO. Upon observing the spray-on insulation, Pittsburgh Hotel, Interstate, and MMG should have presumed that the material contained asbestos and should not have allowed SERVPRO to start any renovation work in the Sheraton Hotel.

15. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove a large quantity of drywall from the ceilings and walls in the rooms and hallways on floors 1 through 6, along with carpeting, insulation, and soft goods located in the rooms. SERVPRO used multiple "air movers" in all the rooms which caused dust and fibers to spread throughout the space.

16. The drywall removed from the ceilings and walls by SERVPRO was covered and contaminated with friable asbestos containing material that had either fallen from the degraded asbestos containing spray-on fireproofing on the steel decking or disturbed during the renovation work. When SERVPRO removed sections of the asbestos covered drywall on the walls and ceilings, the friable asbestos became airborne and contaminated the bedding, carpeting, and other hard and soft furnishings in the rooms. The ACHD's findings are supported by positive wipe samples of the affected areas, as set forth in more detail in Paragraph 20, below, and a report prepared by ATC Group dated June 2, 2017, which states under "Recommendations" for "Asbestos Debris and Dust Clean up" that "[f]ollowing emergency mitigation efforts, spray on fireproofing on the steel deck was disturbed and released fibers to the air which settled onto materials within the spaces creating dust and debris."

17. SERVPRO removed a total of 1,952 sq. ft. of asbestos covered drywall and 2,467 sq. ft. of asbestos contaminated carpeting, insulation, and soft goods from the Sheraton Hotel. The removal of the asbestos covered facility components and asbestos contaminated materials from the Sheraton Hotel was subject to the requirements of the federal and ACHD asbestos

regulations. See EPA Applicability Determination, 5/2/1991, (“Applicability of the Asbestos NESHAP to Facility Components Covered or Coated with Asbestos Containing Materials); EPA Applicability Determination, 12/29/1992, (“Components Covered with ACM”).

18. On or around May 22, 2017, Pittsburgh Hotel, Interstate, and MMG retained ATC Group Services LLC (hereinafter “ATC”) to prepare an asbestos abatement and water restoration project scope of work and performance protocol for impacted rooms and common areas of the Sheraton Hotel.

19. On May 23, 2017, ATC collected bulk samples of the affected area which were analyzed by EMSL Analytical, Inc. On May 24, 2017, Pittsburgh Hotel, Interstate, and MMG were notified that the identified spray-on fireproofing contained 15% asbestos.

20. On May 26, 2017, ATC Group collected 27 wipe samples from dressers, nightstands, sprinkler pipes, and doors located in the rooms, hallways, and conference rooms on the 6th through 1st floors of the Sheraton Hotel. On May 30, 2017, Pittsburgh Hotel, Interstate, and MMG were notified that twenty-five (25) of the twenty-seven (27) wipe samples analyzed were found to contain chrysotile asbestos.

21. On June 2, 2017², ATC Group submitted a report to Pittsburgh Hotel, Interstate, and MMG which states as follows under “Recommendations”:

Asbestos Debris and Dust Clean up

Following emergency mitigation efforts, **spray on fireproofing on the steel deck was disturbed and released fibers to the air which settled onto materials within the spaces creating dust and debris.** ATC recommends that the dust and debris indicated by the presence of Chrysotile in the TEM wipe samples in each of the guest rooms (including 614 which was inaccessible for sampling at the time), stairwell, and the Boardroom be **cleaned and wiped down on all surfaces due to the presence of Chrysotile asbestos** as indicated by the TEM wipe samples

² There is some discrepancy as to the date of the report. A partial copy of the ATC report that was initially submitted to the ACHD is dated June 5, 2017. However, the copy of the ATC report that the ACHD later received in November 2017 from MMG is dated June 2, 2017. Both reports appear to be identical, except for the date.

within a controlled, isolated, or contained work area under negative pressure. Clean up with HEPA vacuum. Porous materials can be laundered or disposed of. Non-porous materials can be wiped down. ATC also recommends restricting access to areas identified with the presence of Chrysotile asbestos until areas can be cleaned and wiped down.

22. After receiving the wipe sample results and the June 2, 2017 report from ATC, Pittsburgh Hotel, Interstate, and MMG failed to notify the ACHD of the asbestos contamination of the Sheraton Hotel. During the ACHD's investigation, Pittsburgh Hotel, Interstate, and MMG also attempted to conceal the asbestos contamination by producing to the ACHD only limited sections of the ATC report. Notably, the sections of the report which included wipe sample results and the "Recommendations" for asbestos debris and dust clean up were not produced. The ACHD obtained a copy of the full report during a document request from MMG in November, 2017.

23. Pittsburgh Hotel, Interstate, and MMG failed to follow ATC's recommendations of restricting access to areas contaminated with asbestos and to utilize proper containment and maintain negative pressure to avoid the further release of asbestos throughout the Sheraton Hotel. Pittsburgh Hotel, Interstate, and MMG also failed to place any signs warning its patrons and the public of the dangers of asbestos. Instead, the areas where asbestos material was identified was left accessible to employees of the Sheraton Hotel.

24. On or about June 1, 2017, Pittsburgh Hotel, Interstate, and MMG contracted with asbestos abatement contractor PRISM Response, Inc. (hereinafter "PRISM"), to perform "stabilization / removal of asbestos dust" in two conference rooms on the first floor of the Sheraton Hotel. Pittsburgh Hotel, Interstate, and MMG failed to notify the ACHD of the asbestos removal or obtain an asbestos abatement permit from the ACHD.

25. On June 2 and 4, 2017, PRISM illegally performed asbestos removal in the Sheraton Hotel conference rooms without an asbestos abatement permit. The conference rooms were opened to the public following the completion of the asbestos abatement activity. Pittsburgh Hotel, Interstate, and MMG failed to perform clearance air sampling or request that the ACHD conduct a final clearance inspection prior to the Sheraton Hotel's conference rooms being opened to the public. The ACHD first became aware of the abatement activity several months later after obtaining documents from MMG pursuant to an ACHD document request.

26. On June 20, 2017, the ACHD received a complaint regarding the potential improper removal of asbestos containing material at the Sheraton Hotel. An ACHD representative visited the Sheraton Hotel on June 20, 2017, to investigate the complaint and learned, for the first time, of the renovation work performed in the Sheraton Hotel by SERVPRO. However, Pittsburgh Hotel, Interstate, and MMG failed to notify the ACHD of the asbestos abatement work performed by PRISM on June 2 and 4, 2017, and failed to inform the ACHD of the positive wipe samples indicating asbestos contamination.

27. On June 20, 2017, following the ACHD's inspection, Pittsburgh Hotel submitted an Asbestos Abatement Permit application for the removal of 1,522 square feet of friable spray-on fire proofing on the 6th through 2nd floors of the Sheraton Hotel. The permit application also states that items such as linens, mattresses, towels, chairs, and curtains would be disposed of as asbestos containing waste. The permit application does not identify the asbestos abatement performed by PRISM in the Sheraton Hotel conference rooms on June 2 and 4, 2017. The ACHD issued the permit (Permit No.: PAA-17-0376) on June 30, 2017.

28. During its investigation, the ACHD was provided a document from ATC titled "Asbestos Abatement and Water Restoration Protocol" (hereinafter referred to as "Abatement Protocol"). Notably, in the abatement protocol, ATC included the following requirements for

asbestos abatement indicating contamination from the asbestos containing spray-on fireproofing of soft and hard goods, as well as HVAC systems in the rooms:

Asbestos Wastes Determination

The following wastes are assumed to be asbestos-containing special wastes during this project and must be handled as asbestos special wastes according to the below requirements:

- a. Spray-on Fireproofing debris from ceiling beams and structural columns
- b. PTAC air-conditioners
- c. Hotel window blinds, curtains, bedcovers, linens, fabric lampshades, towels (only from guestrooms with ceiling drywall cut-outs)
- d. Upholstered desk chair and comfort chair, ottoman (only from guestrooms with ceiling drywall cut-outs)

29. On June 22, 2017, ACHD asbestos inspectors visited the Sheraton Hotel to perform a more extensive inspection. During the inspection, the ACHD inspectors met with representatives of MMG and Interstate Hotels and requested a copy of the asbestos survey. The representatives falsely claimed that an asbestos survey had not been performed, when in fact a survey was conducted on May 23, 2017.

30. During the June 22, 2017 inspection, the ACHD inspectors entered and inspected the rooms and areas that SERVPRO performed renovation activity. The ACHD inspectors found evidence of improper removal of existing facility components such as drywall from the walls and ceilings. The MMG representative was present during the inspection and failed to warn the ACHD inspectors of the positive wipe samples which indicated the presence of asbestos containing dust and debris throughout the rooms. As a result of MMG's failure to notify the inspectors of the risk of asbestos in the rooms, the ACHD inspectors were exposed to asbestos containing fibers and were denied the opportunity to take safety measures to prevent their exposure to asbestos.

31. On June 23, 2017, the ACHD received, for the first time, copies of the asbestos survey of the bulk samples and air samples despite Pittsburgh Hotel, Interstate, and MMG being

in possession of the documents since May 24, 2017. Notably, Pittsburgh Hotel, Interstate, and MMG did not submit the asbestos wipe samples report to the ACHD.

32. On August 1, 2017, Pittsburgh Hotel submitted a second Asbestos Abatement Permit application for the removal of additional friable spray-on fire proofing (Permit No.: PAA17-0429). The permit application does not identify the asbestos abatement performed by PRISM in the Sheraton Hotel's conference rooms on June 2 and 4, 2017.

33. Final clearance inspections for both permits were completed by the ACHD on August 15, 2017. The inspections were limited to the areas of the Sheraton Hotel that were identified in the permit applications submitted to the ACHD. Because Pittsburgh Hotel, Interstate, and MMG failed to inform the ACHD of the asbestos abatement performed by PRISM in the Sheraton Hotel conference rooms on June 2 and 4, 2017, the ACHD did not inspect these areas.

III. VIOLATIONS

VIOLATION OF ARTICLE XXI § 2101.11.a.3 **(Prohibition of Air Pollution)**

34. Article XXI, § 2101.11.a.3, provides, in pertinent part, as follows:

- a. It shall be a violation of this Article to fail to comply with, or to cause or assist in the violation of, any requirement of this Article, or any order or permit issued pursuant to authority granted by this Article. No person shall willfully, negligently, or through the failure to provide and operate necessary control equipment or to take necessary precautions, operate any source of air contaminants in such manner that emissions from such source:

* * * *

3. May reasonably be anticipated to endanger the public health, safety, or welfare.

35. Over the previous five years, the Department has issued several asbestos abatement permits for the removal of asbestos containing spray-on fireproofing on the steel

decking in multiple locations in the Sheraton Hotel. On May 22, 2017, after SERVPRO completed its renovation work, Pittsburgh Hotel, Interstate, and MMG knew or should have known that the exposed spray-on fireproofing on the steel decking contained asbestos and that the dust and debris in the rooms was contaminated with asbestos. The fact that MMG retained ATC to perform an asbestos survey on May 23, 2017, supports a finding that Pittsburgh Hotel, Interstate, and MMG knew of the potential contamination in the rooms.

36. The asbestos survey performed on May 23, 2017 and the wipe samples collected on May 26, 2017 confirmed the widespread asbestos contamination in the water damaged rooms, hallways, and conference rooms on the 6th through 1st floors of the Sheraton Hotel. Further, on June 2, 2017, MMG received a report from ATC which warned of the asbestos contamination in the rooms, hallway, and Boardroom and recommended **“restricting access to areas identified with the presence of Chrysotile asbestos until areas can be cleaned and wiped down.”**

37. Despite this knowledge of asbestos contamination, Pittsburgh Hotel, Interstate, and MMG failed to take any necessary precautions or operate any control equipment to protect Sheraton Hotel’s employees, patrons, and ACHD staff from being exposed to friable asbestos. Such activity placed those exposed to asbestos fibers at risk of asbestos related illnesses.

38. The ACHD finds that from May 22, 2017 to June 22, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2101.11.a.3, by failing to operate necessary control equipment or to take necessary precautions to avoid asbestos from endangering the public.

VIOLATION OF ARTICLE XXI § 2101.11.b.4
(Submitting a false, inaccurate, and incomplete permit application)

39. Article XXI, § 2101.11.b.4, states that “[i]t shall be a violation of this Article for any person to . . . [s]ubmit any application form, report, compliance certification, or any other

submittal to the Department under this Article which is, in whole or in part, false, inaccurate, or incomplete.”

40. On June 20, 2017, and August 1, 2017, Pittsburgh Hotel, Interstate, and MMG submitted Asbestos Abatement Permit applications to the ACHD for the Sheraton Hotel that were false, inaccurate and incomplete. The applications failed to include the wipe sample results which indicated asbestos contamination in the Sheraton Hotel rooms, hallway and conference rooms. Pittsburgh Hotel, Interstate, and MMG submitted a June 2, 2017 report from ATC which included only the results of the survey of the spray-on fire proofing. Pittsburgh Hotel, Interstate, and MMG intentionally omitted relevant portions of the June 2, 2017 report from ATC which states that “spray on fireproofing on the steel deck was disturbed and released fibers to the air which settled onto materials within the spaces creating dust and debris.” The ACHD obtained the relevant portions of the documents several months later from MMG pursuant to an ACHD document request.

41. Further, the permit applications failed to identify the asbestos abatement performed by PRISM in the Sheraton Hotel conference rooms on June 2 and 4, 2017. The ACHD finds that Pittsburgh Hotel, Interstate, and MMG intentionally concealed this information in an apparent attempt to avoid investigation by the ACHD of improper asbestos abatement activity by Pittsburgh Hotel, Interstate, and MMG.

42. The ACHD finds that on June 20, 2017 and August 1, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, Section 2101.11.b.4, by submitting asbestos abatement permit applications that were false, inaccurate, and incomplete.

VIOLATION OF ARTICLE XXI § 2105.60
(Asbestos Abatement Contractor Licenses)

43. Article XXI, § 2105.60, provides, in pertinent part, that no person shall remove or allow the removal of asbestos containing material from a facility unless the person currently holds a valid Annual Asbestos Abatement Contractor License issued by the ACHD.

44. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove drywall from the ceilings and walls which were covered and contaminated with friable asbestos.

45. SERVPRO is not licensed by the ACHD as an Asbestos Abatement Contractor.

46. The ACHD finds that from May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.60, by allowing SERVPRO to remove asbestos without an Asbestos Abatement Contractor License.

VIOLATION OF ARTICLE XXI § 2105.62.b; 40 C.F.R. § 61.145(a)
(Asbestos Survey Requirement)

47. The federal asbestos regulations require that before any demolition or renovation work is performed at a commercial project, the “owner or operator” of the renovation project must have an asbestos survey completed by a licensed inspector to determine whether the facility contains asbestos containing material. 40 C.F.R. § 61.145(a). Article XXI incorporates the federal asbestos regulations. Article XXI, § 2105.62.b.

48. The removal of drywall and carpeting from the Sheraton Hotel is a “renovation” activity as that term is defined at 40 C.F.R. § 61.141. As a renovation activity, Pittsburgh Hotel, Interstate, and MMG, as owners and operators of the Sheraton Hotel, were required to have an asbestos survey conducted prior to the renovation activity by SERVPRO.

49. The ACHD finds that Pittsburgh Hotel, Interstate, and MMG failed to perform an asbestos survey prior to the start of the renovation of the Sheraton Hotel in violation of 40 C.F.R. § 61.145(a) and Article XXI, § 2105.62.b.

VIOLATION OF ARTICLE XXI § 2105.62.h.1
(Asbestos Abatement Permit)

50. Article XXI, § 2105.62.h.1, requires that the owner of a facility obtain an Asbestos Abatement Permit before the removal of asbestos at a facility.

51. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove 1,952 sq. ft. of asbestos covered drywall and 2,467 sq. ft. of asbestos contaminated carpeting, insulation, and soft goods from the Sheraton Hotel. Pittsburgh Hotel, Interstate, and MMG failed to obtain an Asbestos Abatement Permit prior to the start of this removal.

52. On June 2 and 4, 2017, PRISM performed asbestos abatement in the Sheraton Hotel conference rooms. Pittsburgh Hotel, Interstate, and MMG failed to obtain an Asbestos Abatement Permit prior to the start of this asbestos abatement.

53. The ACHD finds that from May 19 to May 21, 2017, and on June 2 and 4, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, Section 2105.62.h.1, by failing to obtain an Asbestos Abatement Permit prior to the removal of asbestos.

VIOLATION OF ARTICLE XXI § 2105.62.k
(Set-up and Preparation Notice)

54. Article XXI, Section 2105.62.k, requires that no person shall conduct, or allow to be conducted, the removal of asbestos unless the ACHD has been notified of completion of the full set-up and preparation of the work area.

55. On June 2 and 4, 2017, Pittsburgh Hotel, Interstate, and MMG allowed PRISM to perform asbestos removal in the Sheraton Hotel conference rooms. PRISM failed to notify the

ACHD of the completion of the full set-up and preparation of the work area prior to the commencement of asbestos removal.

56. The ACHD finds that on June 2 and 4, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, Section 2105.62.k, by allowing PRISM to remove asbestos without notifying the ACHD of the set-up and preparation of the work area.

VIOLATION OF ARTICLE XXI § 2105.63.b.1
(Asbestos Abatement Signage)

57. Article XXI, Section 2105.63.b.1, provides, in pertinent part, as follows:

Facility Protection. No person shall conduct, or allow to be conducted, asbestos abatement activities at any facility unless:

1. Clearly identifiable signs with, and only with, the following specific warning, word for word, are posted at the facility, at eye level in a conspicuous location easily read by passers-by, at all potential approaches to the work area, a sufficient distance from the work area **to permit a person to read the sign and take the necessary protective measures to avoid potential exposure**, from the commencement of preparation for the project until acceptance by the Department of all final clearance inspections for the work area:

“- DANGER - ASBESTOS - CANCER AND LUNG DISEASE
HAZARD - AUTHORIZED PERSONNEL ONLY -
RESPIRATORS AND PROTECTIVE CLOTHING ARE
REQUIRED IN THIS AREA -”

58. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove asbestos covered and contaminated drywall from the ceilings and walls without posting signage on or around the Sheraton Hotel warning passers-by of the presence of asbestos.

59. After SERVPRO completed the removal activity on May 21, 2017, Pittsburgh Hotel, Interstate, and MMG failed to post warning signs even after learning of the asbestos contamination in the guest rooms, stairwell, and conference rooms.

60. The ACHD finds that from May 19, 2017, through June 22, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.b.1, by failing to post clearly identifiable signage anywhere in the Sheraton Hotel in a manner permitting a person to read the sign and take the necessary protective measures to avoid potential exposure to asbestos dust and debris that had contaminated large sections of the hotel.

VIOLATION OF ARTICLE XXI § 2105.63.b.2
(Asbestos Abatement Negative Air Pressure)

61. Pursuant to Article XXI, § 2105.63.b.2, no person shall conduct, or allow to be conducted, asbestos abatement activities at any facility unless negative air pressure is maintained in the work area and the air outside the work area remains uncontaminated by asbestos fibers.

62. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove asbestos covered and contaminated drywall from the ceilings and walls without maintaining negative pressure.

63. After SERVPRO completed the removal activity on May 21, 2017, Pittsburgh Hotel, Interstate, and MMG failed to maintain negative pressure even after learning of the asbestos contamination in the guest rooms, stairwell, and conference rooms. In the June 2, 2017 report from ATC, Pittsburgh Hotel, Interstate, and MMG were warned of the asbestos contamination and ATC specifically recommended that these spaces be cleaned and decontaminated under “negative pressure.” Despite this warning, Pittsburgh Hotel, Interstate, and MMG failed to maintain negative pressure which increased the likelihood asbestos contamination in other portions of the Sheraton Hotel.

64. The ACHD finds that from May 19, 2017, to June 22, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.b.2, by failing to maintain negative air pressure in the work areas.

VIOLATION OF ARTICLE XXI §§ 2105.63.c.1 and c.2
(Decontamination Outside the Work Area)

65. Article XXI, § 2105.63.c.1, requires that “any area outside of the work area which becomes contaminated as a result of the asbestos abatement activity shall be **immediately** decontaminated in accordance with all requirements of this Part.”

66. Article XXI, § 2105.63.c.2, requires that the person responsible for a source “shall immediately, but in no event later than 60 minutes” notify the ACHD after contamination of any area outside of a work area.

67. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove friable asbestos covered drywall from the ceilings and walls which caused asbestos to contaminate rooms, hallway, and conference rooms in the Sheraton Hotel.

68. On May 30, 2017, Pittsburgh Hotel, Interstate, and MMG were informed that wipe samples from dressers, nightstands, sprinkler pipes, and doors located in the rooms, hallways, and conference rooms on the 6th through 1st floors of the Sheraton Hotel were contaminated with asbestos.

69. Despite being aware of the asbestos contamination, Pittsburgh Hotel, Interstate, and MMG waited weeks before taking any measures to decontaminate the spaces and failed to notify the ACHD of the asbestos contamination.

70. The ACHD finds that from May 19, 2017, to June 22, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.c.1, by failing to “immediately” decontaminate the areas in the Sheraton Hotel that had become contaminated with asbestos and Article XXI, § 2105.63.c.2, by failing to notify the ACHD within sixty (60) minutes after the asbestos contamination.

VIOLATION OF ARTICLE XXI § 2105.63.d
(Work Area Preparation)

71. Article XXI, § 2105.63.d, requires the following work area preparation procedures:

- d. **Work Area Preparation.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless:
1. All heating, ventilation, and air conditioning (HVAC) systems for the work area are completely shut down or isolated from the work area.
 2. All movable objects are removed from the work area.
 3. All remaining fixed objects in the work area are covered and enclosed with minimum six mil plastic sheeting sealed with tape.
 4. All openings, including but not limited to windows, corridors, doorways, skylights, ducts, and grilles are sealed off with minimum six mil plastic sheeting sealed with tape.
 5. All floor and wall surfaces are covered with minimum six mil plastic sheeting sealed with tape, all floors with a minimum of two layers of six mil plastic, so that plastic on floors overlaps the plastic on walls by a minimum of 12 inches.

72. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove friable asbestos covered drywall from the ceilings and walls in the Sheraton Hotel.

73. During the inspections conducted on June 20 and 22, 2017, ACHD inspectors observed that dressers, desks, beds and other movable objects were still in the rooms and that the objects, along with the floor and wall surfaces, were not covered in plastic sheeting. Further, the doorways to the rooms and hallways were not sealed off with plastic sheeting sealed with tape.

74. The ACHD finds that from May 19 to 21, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.d, by failing to comply with the work area preparation requirements.

VIOLATION OF ARTICLE XXI § 2105.63.e
(Asbestos Abatement Decontamination Enclosure System Requirement)

75. Pursuant to Article XXI, § 2105.63.e, “[n]o person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless decontamination enclosure systems are provided, maintained, and properly utilized at all locations where persons or equipment enter or exit the work area.” The purpose of the enclosure system is to prevent the spread of asbestos fibers when persons or equipment exit the work area.

76. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove friable asbestos covered drywall from the ceilings and walls in the Sheraton Hotel. During the removal of the asbestos covered drywall, SERVPRO failed to provide, maintain, and properly utilize a decontamination enclosure system. The failure to utilize a decontamination system increased the likelihood that asbestos fibers on persons and equipment spread to other portions of the Sheraton Hotel.

77. The ACHD finds that from May 19 to 21, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.e, by allowing SERVPRO to commence asbestos removal without an asbestos decontamination enclosure system.

VIOLATION OF ARTICLE XXI § 2105.63.f
(Asbestos Abatement Removal Procedures)

78. The ACHD asbestos regulations prohibits the removal of asbestos unless, at a minimum, the procedures set forth in Section 2105.63.f. are met. The Section 2105.63.f. procedures include the following:

Removal Procedures. No person shall commence or continue, or allow the commencement or continuation of, the actual removal of ACM unless, at a minimum, except when the glovebag technique has been approved by the Department as an alternative procedure:

1. All ACM to be removed, being removed, and having been removed, has been wetted and saturated to the substrate with an amended water solution, using low pressure equipment capable of providing a fine spray mist, and is kept wet and saturated until it can be containerized for disposal, except where an alternative procedure has been approved by the Department in advance due to special circumstances (e.g. live electrical equipment, materials previously coated with an encapsulant) which prohibit the adequate use of such wetting methods.
2. All ACM to be removed, being removed, and having been removed, is handled in such a manner so as to prevent the release of any fibers from such ACM during such removal and disposal.

* * * *

7. After completion of the removal of ACM, all surfaces from which the ACM has been removed are wet cleaned to remove all visible residue.

79. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove friable asbestos covered drywall from the ceilings and walls. Pittsburgh Hotel, Interstate, and MMG failed to take steps necessary to ensure that the asbestos covered drywall removed by SERVPRO was handled in such a manner so as to prevent the release of asbestos and to ensure that all surfaces were wet cleaned to remove all visible residue after the completion of the removal.

80. Wipe samples collected from dressers, nightstands, sprinkler pipes, and doors located in the rooms, hallways, and conference rooms on the 6th through 1st floors of the Sheraton Hotel confirm that asbestos fibers were released during the renovation activity by SERVPRO. The wipe samples also confirm that the asbestos fibers were not wet cleaned to remove all visible residue following the completion of the removal by SERVPRO.

81. The ACHD finds that from May 19 to 21, 2017, Pittsburgh Hotel, Interstate, and MMG violated Article XXI, § 2105.63.f, by allowing SERVPRO to remove asbestos without complying with the asbestos abatement removal procedures set forth in Section 2105.63.f.

VIOLATION OF ARTICLE XXI § 2105.63.k.1
(Final Clearance Inspection)

82. Article XXI, § 2105.63.k.1, requires that no person shall fail to continue to maintain negative air pressure at a project work area or reopen the work area to the public until such time as the ACHD has accepted the results of a final clearance inspection.

83. From May 19 to May 21, 2017, Pittsburgh Hotel, Interstate, and MMG allowed SERVPRO to remove friable asbestos covered drywall from the ceilings and walls. After SERVPRO completed the removal activity, Pittsburgh Hotel, Interstate, and MMG allowed the rooms and hallways where the asbestos removal activity was conducted to be accessible to employees of the Sheraton Hotel. Pittsburgh Hotel, Interstate, and MMG failed to perform clearance air sampling or request that the ACHD conduct a final clearance inspection prior to the spaces being reopened to employees. The ACHD finds that Pittsburgh Hotel, Interstate, and MMG violated Article XXI, Section 2105.63.k.1, from May 22 to June 22, 2017, by reopening the rooms and hallway to Sheraton Hotel employees.

84. Further, following the asbestos abatement activity performed by PRISM on June 2 and 4, 2017, Pittsburgh Hotel, Interstate, and MMG allowed the conference rooms to be reopened to the public. Pittsburgh Hotel, Interstate, and MMG failed to perform clearance air sampling or request that the ACHD conduct a final clearance inspection prior to the Sheraton Hotel's conference rooms being opened to the public. The ACHD finds that this conduct constitutes a violation of Article XXI, § 2105.63.k.1.

IV. CIVIL PENALTY

85. Pursuant to the Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, § 2109.06.a.1, the ACHD may assess a of civil penalty of \$25,000 per day for each violation.

86. For the violations set forth in the preceding paragraphs, Pittsburgh Hotel, Interstate, and MMG, jointly and severally, are hereby assessed a civil penalty of FIVE HUNDRED AND NINETY-ONE THOUSAND, NINE HUNDRED DOLLARS (\$591,900.00). The civil penalty is as follows:

A. Gravity Based Component

1. Violations from May 19 to May 21, 2017 (Asbestos removal by SERVPRO)

<u>Violation</u>	<u>Gravity Based Penalty</u>	<u>Violation Days</u>	<u>Total Gravity Penalty</u>
Allowing non-licensed contractor to remove asbestos (§ 2105.60)	\$2,500.00	3	\$7,500.00
Failure to perform asbestos survey (§ 2105.62.b; 40 C.F.R. § 61.145(a))	\$2,500.00	1	\$2,500.00
Failure to obtain asbestos abatement permit (§ 2105.62.h.1)	\$2,500.00	3	\$7,500.00
Failure to post asbestos abatement signage (§ 2105.63.b.1)	\$1,300.00	3	\$3,900.00
Failure to maintain negative air pressure (§ 2105.63.b.2)	\$2,500.00	3	\$7,500.00
Failure to decontaminate area outside the work area (§ 2105.63.c.1)	\$2,500.00	3	\$7,500.00
Failure to notify the ACHD of asbestos contamination (§ 2105.63.c.2)	\$1,300.00	3	\$3,900.00
Failure to meet work area preparation requirements (§ 2105.63.d)	\$1,300.00	3	\$3,900.00

Failure to meet asbestos abatement decontamination enclosure system requirement (§ 2105.63.e)	\$2,500.00	3	\$7,500.00
Failure to properly remove asbestos (§ 2105.63.f)	\$2,500.00	3	\$7,500.00
Opened work area to public without inspection (§ 2105.63.k.1)	\$2,500.00	3	\$7,500.00
Gravity Component Subtotal			\$66,700.00

2. Violations on June 2 and 4, 2017 (Asbestos removal by PRISM)

Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
Submitting false, inaccurate, and incomplete permit applications (§ 2101.11.b.4)	\$2,500.00	2	\$5,000.00
Failure to obtain asbestos abatement permit (§ 2105.62.h.1)	\$2,500.00	2	\$5,000.00
Failure to notify the ACHD of completion of set-up and preparation of work area (§ 2105.62.k)	\$900.00	1	\$900.00
Opened work area to public without inspection (§ 2105.63.k.1)	\$2,500.00	1	\$2,500.00
Subtotal of Gravity Penalty			\$13,400.00

3. Violations from May 22 to June 22, 2017

Violation	Gravity Based Penalty	Violation Days	Total Gravity Penalty
Failure to take necessary precautions to avoid asbestos from endangering the public (§ 2101.11.a.3)	\$2,500.00	31	\$77,500.00
Failure to post asbestos abatement signage (§ 2105.63.b.1)	\$1,300.00	31	\$40,300.00
Failure to maintain negative air pressure (§ 2105.63.b.2)	\$2,500.00	31	\$77,500.00

Failure to decontaminate area outside the work area (§ 2105.63.c.1)	\$2,500.00	31	\$77,500.00
Failure to notify the ACHD of asbestos contamination (§ 2105.63.c.2)	\$2,500.00	31	\$77,500.00
Opened work area to public without inspection (§ 2105.63.k.1)	\$2,500.00	31	\$77,500.00

Subtotal of Gravity Penalty			\$390,600.00
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B. Adjustment Factors:

Intentional and Reckless conduct for violations on June 2 and 4, 2017, and May 22 to June 22, 2017			\$121,200.00
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TOTAL CIVIL PENALTY			\$591,900.00
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87. The ACHD has determined the above civil penalty in accordance with Article XXI § 2109.06.b. reflecting relevant factors including, but not limited to: the nature, severity and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of such violations; the impact of such violations on the public and the environment; the actions taken by Pittsburgh Hotel, Interstate, and MMG to minimize such violations and to prevent future violations; and Pittsburgh Hotel, Interstate, and MMG's compliance history.

88. The gravity based component of the civil penalty reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity based component may be adjusted for factors and circumstances unique to the violator.

89. The ACHD finds that an adjustment to the gravity portion is warranted based on a finding that Pittsburgh Hotel, Interstate, and MMG's conduct from May 22, 2017 to June 22, 2017 was either intentional or done with knowledge that the relevant conduct or omission was

unlawful or that resulted from a reckless disregard of applicable regulatory or legal requirement or good operating practices.

90. On May 22, 2017, after SERVPRO completed its renovation work, Pittsburgh Hotel, Interstate, and MMG knew or should have known that the exposed spray-on fireproofing on the steel decking contained asbestos and that the dust and debris in rooms was contaminated with asbestos. In the prior five years, multiple asbestos abatement permits were issued by the ACHD for the removal of the spray-on fireproofing in other areas of the Sheraton Hotel. Further, the fact that MMG retained ATC to perform an asbestos survey on May 23, 2017, supports a finding that Pittsburgh Hotel, Interstate, and MMG knew of the potential contamination in the rooms.

91. The asbestos survey performed on May 23, 2017 and the wipe samples collected on May 26, 2017 confirmed the widespread asbestos contamination in the Sheraton Hotel. Further, on June 2, 2017, Pittsburgh Hotel, Interstate, and MMG received a report from ATC which warned of the asbestos contamination in the rooms, hallway, and conference rooms and recommended **“restricting access to areas identified with the presence of Chrysotile asbestos until areas can be cleaned and wiped down.”**

92. Despite this knowledge of asbestos contamination, Pittsburgh Hotel, Interstate, and MMG failed to take any necessary precautions to protect Sheraton Hotel’s employees, patrons, and ACHD staff from being exposed to friable asbestos. Instead, Pittsburgh Hotel, Interstate, and MMG concealed this information from employees and patrons of the Sheraton Hotel and the ACHD inspectors who inspected the facility on June 20 and June 22, 2017. Such activity placed those exposed to asbestos fibers at risk of asbestos related illnesses.

93. The ACHD reserves the right revise the civil penalty calculation if new evidence supports such assessment.

ORDER

NOW THEREFORE, pursuant to the authority granted to the ACHD by Article XXI §§ 2109.03.a.1 and 2105.62.e and the Local Health Administration Law, 19 P.S. § 12010, it is hereby **ORDERED** that:

94. For the violations set forth in the above paragraphs, Pittsburgh Hotel LLC, Interstate Hotels Corporation, and Maverick Management Group, jointly and severally, are hereby assessed a civil penalty of FIVE HUNDRED AND NINETY-ONE THOUSAND, NINE HUNDRED DOLLARS (\$591,900.00). Pittsburgh Hotel, Interstate, and MMG shall pay the civil penalty amount within thirty (30) days of receipt of this Order. Payment shall be made by corporate check, or the like, shall be made payable to the "Allegheny County Clean Air Fund" and shall be sent to Air Quality Program Manager, Allegheny County Health Department, 301 39th Street, Building #7, Pittsburgh, PA 15201.

95. Pursuant to Article XI ("Hearings and Appeals") of the Allegheny County Health Department's Rules and Regulations, you are notified that if you are aggrieved by this Order you have thirty (30) days in which to file an appeal from the receipt of this Order. Such a Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. In the absence of a timely appeal, the terms of this Order shall become final.

96. If you appeal this Order, you are required within thirty (30) days of receipt of this Order to either forward the penalty amount to the ACHD for placement in an escrow account or post an appeal bond to the ACHD in the amount of the penalty. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless you allege financial inability to prepay the penalty or to post the appeal bond. Article XXI, §§ 2109.06.a.2-3.

violation or the amount of the civil penalty unless you allege financial inability to prepay the penalty or to post the appeal bond. Article XXI, §§ 2109.06.a.2-3.

97. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of the ACHD so orders.

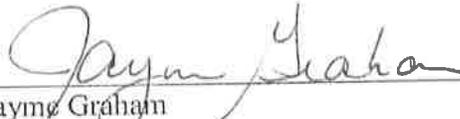
98. Failure to comply with this Order within the times specified herein is a violation of Article XXI giving rise to the remedies provided by Article XXI § 2109.02 including civil penalties of up to \$25,000 per violation per day.

99. The provisions of this Order shall apply to, be binding upon, and inure to the benefit of the ACHD and Pittsburgh Hotel, Interstate, and MMG, and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

DONE and **ENTERED** this 21st day of September, 2018, in Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT



Jayme Graham
Air Quality Program Manager
Allegheny County Health Department

9/21/2018
Date